

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Petition of the Minnesota Public Utilities)	DA 03-2641
Commission for FCC Agreement to)	
Redefine the Service Areas of Twelve)	
Minnesota Rural Telephone Companies)	
)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the proceeding on the Minnesota Public Utilities Commission (Minnesota PUC) petition requesting FCC concurrence with its proposal to redefine the service areas of twelve rural telephone companies.¹ OPASTCO is a national trade association representing approximately 500 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's

¹*The Wireline Competition Bureau Seeks Comment on the Minnesota Public Utilities Commission's Petition to Redefine Rural Telephone Company Service Areas in the State of Minnesota*, CC Docket No. 96-45, Public Notice, DA 03-2641 (rel. Aug. 12, 2003).

members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition, they are all eligible telecommunications carriers (ETCs) in their respective service areas.

OPASTCO agrees with commenters who have urged the Commission to stay consideration of the Minnesota PUC's petition pending the resolution of the proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. Should the Commission deem it necessary to address the petition prior to the resolution of this related proceeding, then it should reject the Minnesota PUC's proposal to fragment the twelve rural ILEC study areas, since the petition fails to provide a compelling rationale for such an action.

II. COMMENTS

On February 7, 2003, the Federal-State Joint Board on Universal Service (Joint Board) issued a Public Notice which sought comment on numerous competitive universal service issues.² These issues include the methodology for calculating support in competitive study areas, the process for designating additional ETCs, and the factors that should be considered "when determining whether the designation of a competitive ETC below the study area level is in the public interest."³ Comments and reply comments have been filed in this proceeding, and the Joint Board conducted a hearing on these issues on July 31, 2003. It is quite possible that, as a result of this proceeding, there will be significant changes in the way in which competitive ETCs are designated, and in the level of support that they receive.

² *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (Joint Board Portability Public Notice).

³ Joint Board Portability Public Notice, 18 FCC Rcd 1956-1957, para. 35.

Several commenters have recommended that until the issues being considered in the Joint Board Portability Public Notice are resolved, the Commission should stay consideration of the Minnesota PUC's petition.⁴ While key policies related to ETC designations are currently under review, it remains unclear how the Commission should evaluate whether or not the proposed redefinition of multiple rural telephone company service areas would serve the public interest. Thus, a stay on the review of the Minnesota PUC's petition is the most reasonable approach for the FCC to take at this time.

Should the Commission deem it necessary to address the Minnesota PUC's petition prior to the resolution of the portability proceeding, then it should reject the proposal to fragment the twelve rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action. Specifically, service area redefinitions are not necessary to "fully implement" the Minnesota PUC's designation of Midwest Wireless as an ETC, as claimed in the petition. Moreover, the redefinition of the twelve rural service areas so as to facilitate financially supported competition, distorts the intended purposes of the High-Cost universal service program.

The Minnesota PUC indicates that Midwest Wireless claims that it is unable to provide its universal service offerings throughout the entire service areas of the twelve

⁴ See, CenturyTel, Inc. (CenturyTel) Comments, pp. 7-8; Citizens Telecommunications Company of Minnesota, Inc. and Frontier Communications of Minnesota, Inc. (Citizens) Comments, pp. 1-2, 6; Minnesota Independent Coalition (MIC) Comments, pp. 10-11; United States Telecom Association (USTA) Comments, pp. 3-4. Similar proposals have been suggested in relation to the Commission's consideration of pending eligible telecommunications carrier (ETC) applications. See, Verizon Comments in CC Docket No. 96-45 (filed July 7 and July 14, 2003), pp. 1, 8; OPASTCO Comments and Reply Comments in CC Docket No. 96-45 (filed July 14, July 21, Aug. 18, Aug. 21, and Sept. 4); New York State Telecommunications Association Comments in CC Docket No. 96-45 (filed Aug. 18, 2003). See also, NTCA Reply Comments on the Joint Board Portability Public Notice, CC Docket No. 96-45 (filed June 3, 2003), pp. 22-23.

rural telephone companies addressed by the petition.⁵ As a result, the petition proposes to redefine these service areas in a manner that conforms to the licensed service area of Midwest Wireless, so that the provisions of Section 214(e) of the Telecommunications Act of 1996 (the 1996 Act, the Act) would be met.⁶ This would require service area definitions at the wire center, and in some cases, even the sub-wire center level.⁷

However, such an action is unnecessary since Midwest Wireless has the ability to provide service both inside and outside of its licensed service area, should it so choose.⁸ Commenters correctly indicate that Midwest can serve the entirety of the twelve rural telephone company study areas – including those portions that extend beyond its licensed territory – through a combination of its own facilities, roaming agreements, and resale of other carriers’ services, as permitted in Section 214(e)(1)(A) of the 1996 Act.⁹ In fact, even the Minnesota PUC has acknowledged that Midwest can use some combination of its own facilities and resale of other carriers’ existing services, in order to extend its own services in response to customer service requests.¹⁰ Moreover, the FCC has previously noted that a wireless ETC could “supplement its facilities-based service with services

⁵ *Petition of the Minnesota Public Utilities Commission for Agreement to Redefine the Service Areas of Twelve Minnesota Rural Telephone Companies*, CC Docket No. 96-56, p. 6-7 (filed Aug. 7, 2003) (Minnesota Petition).

⁶ Minnesota Petition, pp. 10-11. Section 214(e)(1)(A) requires that, in order for a carrier such as Midwest Wireless to be designated as an ETC, it must be able to offer all of the services supported by federal universal service support throughout the service area for which such designation is received.

⁷ Minnesota Petition, pp. 10-11.

⁸ CenturyTel Comments, p. 5; MIC Comments, pp. 3-4; USTA Comments, pp. 3, 9-11.

⁹ MIC Comments, p. 3; USTA Comments, p. 10.

¹⁰ *Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. §214(e)(2)*, MPUC Docket PT-6153/AM-02-686, p. 6 (rel. March 19, 2003).

provided via resale”¹¹ so as to extend service to those portions of a rural telephone company’s study area not within the wireless carrier’s license area.

Consequently, it is clear that Midwest Wireless is not incapable of serving the segments of the twelve rural study areas that fall outside of the area for which it has a wireless spectrum license. Rather, Midwest Wireless has simply made a business decision to deny service to these areas.¹² It is entirely at odds with the principles of universal service to allow a competitive ETC to exercise a preference to ignore portions of a rural telephone company’s study area that it deems unattractive or inconvenient to serve.

MIC correctly notes that acceptance of the proposed redefinition would allow Midwest to continue concentrating on serving just the more densely populated areas and highway corridors within its license area, as it presently does.¹³ It would also permit any future competitive ETCs that were designated to target only those exchanges where the profit potential is greatest and the cost to serve is lowest, while ignoring the less lucrative, higher-cost exchanges.¹⁴ The ability of competitors to creamskim through the adoption of narrowly defined service areas does nothing to promote universal service. It only increases the cost of providing service to the remaining customers that only the incumbent has the obligation to serve. This, in turn, places at risk the incumbent’s ability

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8881-8882, para. 189 (1997).

¹² *See also*, MIC Comments, p. 4.

¹³ MIC makes this assertion on the basis of an evaluation of the locations of Midwest Wireless’ existing cellular tower sites. *See*, MIC Comments, p. 8.

¹⁴ *See*, CenturyTel Comments, p. 5; Citizens Comments, p. 5.

and incentive to continue investing in the infrastructure that brings high-quality services to these customers.¹⁵

Moreover, the Minnesota PUC's decision to approve Midwest Wireless' application for ETC status for only the area covered by its spectrum license¹⁶ was premature. In the 1996 Act, Congress established a presumption that a rural telephone company's entire study area would be the area that a competitor would have to agree to serve before it could become eligible for universal service support.¹⁷ Thus, by designating Midwest Wireless as an ETC for only its licensed service area, prior to receiving FCC concurrence on the redefinition of the rural telephone company service areas, the Minnesota PUC has put the cart before the horse.¹⁸

Ultimately, the fundamental flaw of the Minnesota PUC's petition is that it rests solely on vague generalities regarding the generic benefits of competition. It presupposes that the designation of Midwest Wireless as an ETC and the alignment of the identified rural telephone company service areas with the cellular license area is in the public interest because it will "promote increased competition."¹⁹ However, Congress did not intend for competition, in and of itself, to be used as the basis for designating ETCs in rural telephone company study areas or for facilitating their receipt of high-cost universal service support.²⁰ As a result, if the Commission deems it necessary to act at this time,

¹⁵ See, Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO, (January 2003), pp. 35-37 (OPASTCO White Paper).

¹⁶ Minnesota Petition, p. 7.

¹⁷ 47 U.S.C. § 214(e)(5).

¹⁸ See, USTA Comments, p. 9.

¹⁹ Minnesota Petition, pp. 7-8.

²⁰ See, USTA, p. 12.

then it should reject the Minnesota PUC's proposal to fragment the study areas of the twelve rural telephone companies identified in the petition.

III. CONCLUSION

For the foregoing reasons, OPASTCO urges the Commission to stay consideration of the Minnesota PUC's petition pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. Should the Commission deem it necessary to address the petition prior to the resolution of this related proceeding, then it should reject the Minnesota PUC's proposal to fragment the twelve rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 9th day of September, 2003, to those listed on the attached list.

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